

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

AMERICAN BOTTOM CONSERVANCY,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 09-603-GPM
)	
UNITED STATES ARMY CORPS OF)	
ENGINEERS, COLONEL THOMAS E.)	
O'HARA, and WASTE MANAGEMENT OF)	
ILLINOIS,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter is before the Court on the motion for taxation of costs on appeal brought by Plaintiff American Bottom Conservancy (“American Bottom”) (Doc. 78). In this action, American Bottom challenges under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, a permit issued by Defendant United States Army Corps of Engineers (“the Corps”) to Defendant Waste Management of Illinois (“Waste Management”) pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344.¹ On September 30, 2010, the Court granted summary judgment in favor of the Corps and Waste Management, finding that American Bottom lacked standing to sue.

1. Because Defendant Colonel Thomas E. O’Hara is sued in his official capacity as the Commander of the Corps’ Mississippi Valley District, American Bottom’s claim against O’Hara is deemed by the Court to be a claim against the Corps. *See Monell v. Department of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 n.55 (1978) (noting that “official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent[.]”). Accordingly, the Court will refer to O’Hara and the Corps collectively as “the Corps” throughout this Order.

On appeal from the Court's judgment, American Bottoms procured reversal of the judgment. In the mandate of the United States Court of Appeals for the Seventh Circuit in the appeal, costs were taxed against the Corps and Waste Management in the amount of \$218.81 for reproduction of briefs. American Bottom now requests that this Court tax additional costs on appeal against the Corps and Waste Management in the amount of \$486.50.

Pursuant to Rule 39 of the Federal Rules of Appellate Procedure, certain costs of an appeal are taxable in a district court. The rule provides, in relevant part:

Costs on Appeal Taxable in the District Court. The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (1) the preparation and transmission of the record;
- (2) the reporter's transcript, if needed to determine the appeal;
- (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

Fed. R. App. P. 39(e). In this instance American Bottom has furnished the Court with the declaration of one of its attorneys, Elizabeth J. Hubertz, and invoices showing that American Bottom incurred as costs on appeal the expenses of \$455.00 for filing its notice of appeal and \$31.50 for obtaining a transcript of the hearing on summary judgment that resulted in the dismissal of this case. These costs are properly taxable against the Corps and Waste Management, and therefore the Court will tax costs against Defendants in the amount of \$486.50.

To conclude, American Bottom's motion for taxation of costs on appeal (Doc. 78) is **GRANTED** and it is hereby **ORDERED** that, pursuant to Rule 39(e) of the Federal Rules of Appellate Procedure, American Bottom is entitled to costs on appeal in the total amount of \$486.50 for the cost of filing the notice of appeal in this case and the cost of the reporter's transcript on appeal. These costs are in addition to costs in the total amount of \$218.81 previously taxed in the

Seventh Circuit Court of Appeals and paid by Defendants. Upon the agreement of the parties, American Bottom's costs are apportioned evenly among the Defendants. Accordingly, the Clerk of this Court is directed to issue execution against the Corps for \$243.25 and against Waste Management for \$243.25.

IT IS SO ORDERED.

DATED: November 16, 2011

/s/ G. Patrick Murphy
G. PATRICK MURPHY
United States District Judge